

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC04-133

INQUIRY CONCERNING A JUDGE NO. 03-119

RE: JUDGE DAVID M. GOODING

REPLY TO AFFIRMATIVE DEFENSES

The Florida Judicial Qualifications Commission (the “JQC”) hereby respectfully submits its Reply to Respondent, Judge David M. Gooding’s (“Judge Gooding”) Affirmative Defenses as follows.

FIRST AFFIRMATIVE DEFENSE

This is no defense as a matter of law. The subject matter jurisdiction of the JQC to “investigate, act, upon, or dispose of alleged violations” of Florida’s Election Code by a judicial candidate cannot be seriously disputed. Section 106.25 expressly provides for concurrent jurisdiction over campaign and election law violations. Notwithstanding the jurisdiction granted to the Florida Elections Commission, nothing in that “section limits the power of any other officers or agencies of government empowered by law to investigate, act upon, or dispose of alleged violations of this code.” § 106.25(1).

The JQC is, of course, “vested with jurisdiction” over all matters related to judicial fitness under Article V, § 12 of the Florida Constitution, and “provides an alternative means of discipline for judicial officers” Forbes v. Earle, 298 So. 2d 1,3 (Fla. 1974). Thus, the JQC “may at any time consider any acts of misconduct which reflect adversely upon the general character and fitness necessary to the proper performance of judicial office,” including statutory violations. In re Kelly, 238 So. 2d 565, 570 (Fla. 1970).

SECOND AFFIRMATIVE DEFENSE

This is not a legally sufficient defense because it is totally devoid of any factual basis. The entirely conclusory assertion that the charges “are barred, in whole or in part, by the doctrine of laches” is not a cognizable defense. Moreover, such an alleged equitable defense simply does not apply in these proceedings which seek to “determine whether” Judge Gooding is “unfit to hold a judgeship,” so long as the proceedings “conform to minimum standards of due process.” In re Kelly, 238 So. 2d at 569.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Reply to Affirmative Defenses** has been furnished by U.S. Mail to **Rutledge R. Liles, Esquire**, Liles Gavin & Costantino, 225 Water Street, Suite 1500, Jacksonville, Florida 32202-5148, Attorney for Judge Gooding, this 15th day of March 2004.

Attorney